

To: Symmes, Brian[Symmes.Brian@epa.gov]
Cc: Betsy Natz[bnatz@kcma.org]; Winchester, Erik[Winchester.Erik@epa.gov]
From: Mark Duvall
Sent: Mon 2/27/2017 6:53:23 PM
Subject: Formaldehyde rule - non-complying lots issue
Letter to EPA from KCMA re non-complying lots - 2-17-17.PDF

On behalf of the Kitchen Cabinet Manufacturers Association (KCMA), I am forwarding to you a letter that KCMA sent to Acting Assistant Administrator Wendy Cleland-Hamnett regarding an important issue arising under the final rule on formaldehyde in composite wood products. She suggested that you may be best situated to address this issue. The letter describes the issue and requests a meeting with appropriate EPA personnel.

The issue has to do with the non-complying lots provision of the rule, 40 C.F.R. § 770.20(f), as applied to fabricators. Under that provision, a fabricator may receive a notification from a panel producer that panels the fabricator received were part of a lot that failed an emissions test. If the fabricator has already built finished products using the affected panels and shipped those finished goods to customers by the time the fabricator receives the notification, that provision arguably requires the fabricator to notify its customers that those finished products must be isolated; cannot be further distributed; and must either be recalled or treated and retested.

This non-complying lots provision appears to be designed with panels in mind. But the provision makes no sense when applied to finished goods, where it is no longer feasible to treat or test panels which have been incorporated into finished goods. The provision was not included in the proposed formaldehyde rule (which would have required panel producers to hold panels until test results were available). As a result, EPA does not appear to have thoroughly considered how this provision would work in practice.

KCMA and its members are very concerned that they may face a situation in which compliance is essentially impossible. KCMA requests a meeting with you and others as appropriate (such as Brian Winchester) to discuss how to interpret this provision. The attached letter makes some suggestions, but EPA may have additional ideas.

I will contact your office shortly to discuss timing for a meeting. Thank you for your attention to this important issue.

Mark Duvall

Principal

**BEVERIDGE
& DIAMOND^{PC}**  **BEVERIDGE & DIAMOND, P.C.**
1350 I Street, NW, Suite 700, Washington, DC 20005
T +1.202.789.6090 F +1.202.789.6190 MDuvall@bdlaw.com

CONFIDENTIALITY STATEMENT: This electronic message contains information from the law firm of Beveridge & Diamond, P.C. and may be confidential or privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at +1.202.789.6000 or by e-mail reply and delete this message. Thank you.